

The logo for Astrachan Gunst Thomas features a stylized, swirling graphic in shades of blue and grey behind the company name. The name is written in a clean, sans-serif font, with 'astrachan' and 'thomas' in a darker blue and 'gunst' in a lighter blue.

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a professional corporation
attorneys at law
baltimore . washington, d.c.
www.agtlawyers.com

See Jane Play: Is Your Employee's Online Image Trashing Yours?

By: Julie Rubin

Tomatoes, a blender, a sprinkle of coarse salt. Maybe a drop of good olive oil. This is too easy. You can't even call this cooking. The perfection that is a late summer, homegrown, Maryland tomato. My parents sent me to Sunday school. I was even bat mitzvah'd. But this summer tomato soup is all the proof I need. There is a God.

Over the din of my ancient Waring blender, I hear the telephone. "Hello?," I answer. It was Susan Manning, Executive Director of a national trade association I have had the good fortune to represent for several years. Headquartered just outside of DC, the trade association has individual and entity members from coast to coast. Last I checked, its membership numbers topped 700. There is the usual annual convention and other standard perks you might expect from a trade association. But its members – who pay handsomely for membership, I might add – are most interested in the influence the association has on state and national legislative initiatives that stand to benefit or impair their business interests directly. It's a very buttoned-down group. Image is everything.

So when Susan mentioned Facebook, I knew there was trouble. Vigilant guardians of a conservative national image tend to recoil at the very mention of a My Space, Twitter, Facebook or any other worldwide, unregulated, launch pad for unedited and unpredictable speech. If you fit that profile, brace yourself.

To the uninitiated, Facebook users create a profile in which they publish various bits of personal information, including their education, political party, music interests, and, you guessed it, employment information. It also allows users to share personal "status updates." A typical assortment of status updates might include: "When will it stop raining?," "Spent over 1hr in dang grocery store!" and "Trying to choose between Bermuda and the Bahamas." You get the picture.

Susan explained that a lower level communications associate in her office had created a Facebook profile in which she, in addition to revealing her love of 70s funk

bands, identified herself as an employee of my client, the trade association. The employee – I'll call her Jane – even included a link to my client's website on her profile page. If Jane had led the life of Sister Jane of Mary Our Queen, that'd be one thing. But we're talking more "Me Jane. You Tarzan." In addition to Jane's penchant for posting photos that would, in my humble opinion, be better suited to lining a bird cage, Jane had done far more damage to my client's traditional image than adding to the standard fodder of internet social sites: lots of shiny, happy faces pressed against one another against a backdrop of Corona Light string lights and plastic palms trees at the local Tex-Mex joint.

Jane's status updates read like a court reporter's transcript of Susan's office. A few gems:

"I swear my boss never brushes her teeth. Ever. Hello? Toothbrush much? Stand clear!"

"I work for the Devil's spawn. Help!"

"Okay. It's only 10am. 7 more hours of this crap. Self-righteous does not begin to describe the people I work for. Hey – anybody got a job opening?? Grrr."

"Why did I quit my old job for this? And why didn't anyone tell me I was crossing over to the dark side?"

And my personal favorite:

"Why the hell these people think passing a law about XXX is going to do a damn bit of good for this country is beyond me."

This last post started an informal but heated online debate about the political legitimacy and moral character of the legislative initiatives my client regularly hires lobbyists to help get passed. Jane's online comments were intensely critical of my client, as well as its high-powered members.

An employee of one of my client's board members had come across Jane's online profile and, after seeing where Jane was employed, "friended" her on Facebook. Following that, the board member's employee had live feed access to all of Jane's status updates. The employee reported what she saw to the board member, a high-ranking official at one of the trade association's most influential members. Ouch.

To say that Susan was personally and professionally mortified is like saying the Beatles wrote a few catchy tunes. Even more overwhelming than her

halitosis going worldwide, was the damage control needed for the trade association's membership. Susan had her hands full.

Susan called me as much for legal as for business advice. Had anything Jane done put the trade association at risk for legal liability? Not likely. Nothing was defamatory (not about the company anyway); there were no contracts breached, no torts committed. Jane, on the other hand, may well have breached her duty of loyalty to the trade association – a common law duty each employee owes her employer – not to conduct herself in a manner patently contrary to my client's interests. But I wasn't about to advise my client to spend tens of thousands of dollars to sue a 20-something with college loans (read: judgment proof), particularly where monetary damages may well not be awarded. Aside from the fact that such a lawsuit made no economic sense, it had a high probability of drawing a firestorm of negative attention from people who operate under the mistaken belief that employees have First Amendment rights in a private employment setting. No such animal exists. My client, however, is a political animal and a very public one at that. The image of skewering a young, lithe gal for political criticism (no matter how ill-conceived) would draw negative publicity to an event Susan was more interested in quieting than turning into a call to arms. No lawsuit.

This situation was fraught less with legal issues than with business and reputation issues. Certainly, Jane would be terminated. Her gross lack of judgment was reason enough. I drafted and provided Susan with a contract to offer Jane a small severance package in exchange for her agreement to take down her online comments and to refrain from making any future disclosures or communications about my client or its members. The idea of paying Jane anything made Susan wince, but two weeks' salary in exchange for peace and quiet – not to mention preserving the reputation of the trade association and its members – made good business sense. Plus, Susan needed to demonstrate quickly and unequivocally to association members, board members and employees that she was in control of the situation. Had Jane not been in debt, I might not have been able to buy back my client's honor at such a cheap price.

The 10,000-foot view is that this was more potential crisis than actual crisis. The communications came from an employee to whom few would attribute serious credibility. She was not an insider. Just two years ago, she was the office intern. It was a pointed embarrassment, yes, but it was nipped in the bud, and by all appearances, would have no lasting effect.

What this problem lacks in legal substance it more than makes up for in business lesson value. Every single employer on the face of the plant ought to prohibit their employees from: 1) accessing social networking sites while at work or from a company computer; and 2) publishing any comments or statements

about the company, including identifying themselves as company employees, absent advance written consent, which should be conditioned upon employee permission to monitor online profiles. This should be an express written workplace policy, signed by all employees, as well as a term of all independent contractor agreements.

Even where an employer has made its presence on social networking sites part of its public image, as many today have, there is no plausible business reason why any employee should be permitted to play on these websites at work or through a company computer (except for the lad whose job includes updating the company profile). I am a meanie. Yes, it's true. And apparently not too much fun. But just ask Susan, she'd rather be a meanie than a stinker.